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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SYED MOHAMMAD HUSAIN,
TODD JOHN ENRIGHT, and BARRY W. THORNTON

Appeal 2009-001135
Application 10/662,955
Technology Center 2800

Decided: March 1, 2010

Before ALLEN R. MACDONALD, JOHN A. JEFFERY, and ELENI
MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-30. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's Invention

Appellants' invention is directed to Distributed Computing Infrastructure (DCI) system and method for automatic software retrieval on a peer-to-peer network. Software may be sent from a first computer system to one or more remote computer systems along with instructions for automatically installing the software at the remote computer systems. The instructions for deploying the software may comprise one or more messages in a portable format (e.g., XML). Using DCI, the instructions for installing the software may be translated from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions. The executable instructions may then be executed to install the software at each of the one or more remote computer systems. (Spec. 5:24-6:4).

Claim 1 is illustrative of the invention and reads as follows:

1. A method comprising:
 - receiving software at one or more remote computer systems; and
 - receiving instructions for installing the software at the one or more remote computer systems, wherein the instructions for installing the software comprise one or more messages in a portable format;
 - translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions; and

executing the executable instructions to install the software at each of the one or more remote computer systems.

The Examiner's Rejections

The Examiner's Answer cites the following prior art references:

Turpin	US 6,144,992	Nov. 7, 2000
Vigue	US 6,983,326 B1	Jan. 3, 2006 (effectively filed Apr. 6, 2001)

1. The Examiner rejected claims 1-6, 8-14, 16-22, and 24-30 under 35 U.S.C. § 102(b) as being anticipated by Turpin.
2. The Examiner rejected claims 7, 15, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Turpin in view of Vigue.

We note that Appellants (Br. 5-8) argue rejected claims 1-3, 8-11, 16-19, and 24-30 together as a group, making particular reference solely to independent claim 1. Accordingly, we select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(vii) (2004). Similarly, for the group of claims 4, 12, and 24 (Br. 8-9), we select claim 4 as representative. We also select claim 5 as representative for the group of claims 5, 13, and 21. For the group of claims 6, 14, and 22 (Br. 9-10), we select claim 6 as representative, and for the group of claims 7, 15, and 23 (Br. 10-11), we select claim 7 as representative.

ISSUES

With respect to claim 1, Appellants (Br.6) argue that while Turpin's recipient computer system receives packets of data and executes commands

located in the command field of each packet to process the data accordingly, none of the commands are translated from a portable format to an executable format, nor are any of the commands executable to translate other instructions (e.g., instructions for installing software) from one format to another format.

Appellants (Br. 8) further argue that Turpin does not teach or suggest that instructions for installing the software are recorded in the manner recited in claim 4 where the same instructions for installing the software are received at the one or more remote computer systems and translated from a portable format to an executable format at each of the one or more remote computer systems.

With respect to claim 5, Appellants (Br. 9) argue that Turpin does not teach or suggest that the instructions to send the software to an additional remote computer system and install the software on the additional remote computer system are recorded in the same manner as recited in claims 4 and 5.

With respect to claim 6, Appellants (Br. 10) argue that Turpin does not teach user input to select the one or more remote computer systems from a plurality of available computer systems.

With respect to claim 7, Appellants (Br. 11) argue that the combination of Turpin and Vigue would not have been obvious for the Examiner's articulated motivation (i.e., allowing for flexibility in mark-up of sections in the message allowing for flexibility in displaying and presenting data) because it was not found in either one of the references.

Thus, the pivotal issues before us are whether Turpin teaches:

(1) the limitation of “translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions” as recited in claim 1;

(2) the limitation of “receiving user input to record the instructions for installing the software” as recited in claim 4; and

(3) the limitation of user input to send the software to an additional remote computer system as recited in claim 6.

The last issue is whether:

(4) Turpin and Vigue are combinable for the Examiner’s articulated reason which was not found in either reference.

FINDINGS OF FACT

The record supports the following relevant findings of fact (FF) by a preponderance of the evidence:

1. Turpin teaches that under a user command, computer software can be installed on one or more computers simultaneously over a network (col. 3, l. 66-col. 4, l. 3; col. 1, ll. 10-21).
2. Turpin teaches that a “master” computer transfers the data from its disk drive or drives to one, some or all of the other computers on the network designated as “slaves” (col. 6, l. 64-col. 7, l. 2).
3. Turpin teaches that a slave computer uses the IMGSLAVE program to listen for data from the IMGBLSTR program from the master computer across the network and write such data to its local disk drive (col. 4, ll. 46-51; col. 7, ll. 30-35).

4. Turpin teaches that each packet of data received on the socket contains a command field which tells IMGSLAVE what the data contained in the packet is used for and how the data is to be processed (col. 5, ll. 19-25).
5. Turpin teaches that the master “Sector Data & Flush” command requires the slave computer to write the received data to buffer and flush the data to a disk (*see* fifth entry in Table of col. 5).
6. Turpin teaches that the binary data on one computer are mirrored or copied to one or more computer’s hard disk drive (col. 1, ll. 7-10).
7. Turpin teaches that the operator/user enters the commands on the command line allowing the operator to specify whether to upload or download an application during which the operator provides the name of the file and the complete path along with the indication to send the drive data to other slave computers via broadcast packets (col. 3, l. 66- col. 4, l. 3; col. 5, ll. 16-19; col. 9, ll. 46-63).
8. Turpin teaches that the operator enters the commands on the command line (col. 5, ll. 11-18).
9. Turpin teaches that “upon user command” computer software and computer data files can be installed on more than one computer simultaneously (col. 3, l. 66-col. 4, l. 3).
10. Turpin expressly teaches that “a system operator can transfer data stored on a single computer system to *all or some*” of the computer systems over a computer network (Abstract; also *see* col. 1, ll. 10-13) (emphasis added).

11. It is uncontested by Appellants that the XML package format allows marking-up sections in the message thereby allowing for flexibility in displaying and presenting data.
12. Vigue teaches using “the well-accepted and widely utilized XML format” as a packet format (col. 8, ll. 14-19).

PRINCIPLES OF LAW

Motivation to combine references can be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *See In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

Discussing the question of obviousness of a patent that claims a combination of known elements, *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007), explains:

If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson’s-Black Rock[, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR, 550 U.S. at 417.

ANALYSIS

I. The 35 U.S.C. § 102(b) rejection of claims 1-3, 8-11, 16-19, and 24-30 as anticipated by Turpin.

Turpin teaches that under a user command, computer software can be installed on one or more computers simultaneously over a network (FF 1). Turpin teaches that a “master” computer transfers the data from its disk drive or drives to one, some or all of the other computers on the network designated as “slaves” (FF 2). A slave computer uses the IMGSLAVE program to listen for data from the IMGBLSTR program from the master computer across the network and write such data to its local disk drive (FF 3). Turpin teaches that each packet of data received on the socket contains a command field which tells IMGSLAVE what the data contained in the packet is used for and how the data is to be processed (FF 4). Turpin teaches that the master “Sector Data & Flush” command requires the slave computer to write the received data to buffer and flush the data to a disk (FF 5). Turpin teaches that the binary data on one computer (i.e., master) are mirrored or copied to one or more computer’s hard disk drive (i.e., slaves) (FF 6).

Accordingly, Turpin teaches translating the instructions for installing the software from the portable format (i.e., instructions contained in the command field of the packet data dictating how the data is to be used) to an executable format (i.e., received data to buffer and flushed to a disk) thereby generating executable instructions (i.e., copied binary data from a master to a slave computer) (FF 1-6). Therefore, we do not agree with Appellants’ argument (Br. 6) that none of the commands are translated from a portable format to an executable format. We also remain unconvinced by

Appellants' argument (Br. 6) that none of the commands are executable to translate other instructions (e.g., instructions for installing software) especially since Turpin explicitly teaches that by sending packets of data having embedded commands computer software are installed on one or more computers simultaneously over a network (FF 1 and FF 4).

For the foregoing reasons, we will sustain the rejection of claim 1 and of claims 2, 3, 8-11, 16-19, and 24-30, which fall with claim 1.

II. The 35 U.S.C. § 102(b) rejection of claims 4, 12, and 20 as anticipated by Turpin.

We are not persuaded by Appellants' argument (Br. 8) that Turpin does not teach or suggest that instructions for installing the software are recorded in the manner recited in claim 4. Claim 4 requires "receiving user input to record the instructions for installing the software." Turpin teaches that the operator/user enters the commands on the command line allowing the operator to specify whether to upload or download an application (i.e., install an application) during which the operator provides the name of the file and the complete path along with the indication to send the drive data to other slave computers via broadcast packets (FF 7). Accordingly, Turpin teaches that when the operator enters the commands on the command line (FF 8), the command line records the user input into the computer (i.e., records the instructions for installing the software).

With respect to Appellants' argument (Br. 8) that Turpin does not teach that the "same" instructions for installing the software are received at one or more remote computer systems, we note that this argument is not

commensurate in scope with the claim 4 which recites nothing regarding the instructions being the “same.”

Accordingly, we will also sustain the Examiner’s rejection of claims 4, 12, and 20.

III. The 35 U.S.C. § 102(b) rejection of claims 5, 13, and 21 as anticipated by Turpin.

Appellants repeat the same argument as articulated *supra* with respect to claim 4. Accordingly, we will sustain the Examiner’s rejection of claims 5, 13, and 21 for the same reasons as stated above.

IV. The 35 U.S.C. § 102(b) rejection of claims 6, 14, and 22 as anticipated by Turpin.

We do not agree with Appellants’ argument (Br. 10) that Turpin does not teach user input to select the one or more remote computer systems from a plurality of available computer systems. Turpin teaches that “upon user command[,]” computer software and computer data files can be installed on more than one computer simultaneously (FF 9). Turpin expressly teaches that “a system operator can transfer data stored on a single computer system to *all or some*” of the computer systems over a computer network (FF 10) (emphasis added). Accordingly, Turpin teaches user input to select the one or more remote computer systems from a plurality of available computer systems.

Thus, we will also sustain the Examiner’s rejection of claim 6 and of claims 14 and 22 that fall with claim 6.

V. *The 35 U.S.C. § 103(a) rejection of claims 7, 15, and 23 as unpatentable over Turpin in view of Vigue.*

We do not agree with Appellants' argument (Br. 11) that the combination of Turpin and Vigue would not have been obvious for the Examiner's articulated reason (i.e., wherein using XML allows marking-up sections in the message thereby allowing for flexibility in displaying and presenting data) because it was not found in either one of the references.

At the outset, we note that it is uncontested by Appellants that XML has the capability for providing the recited flexibility (FF 11). Thus, the pertinent issue is whether motivation must be found in the references themselves or can also be found in the knowledge generally available to one of ordinary skill in the art.

We agree with the Examiner (Ans. 20) that Vigue's teaching of using "the well-accepted and widely utilized XML format" as a packet format (FF 12) implemented in Turpin would provide the predictable result of allowing marking-up sections in the message thereby allowing for flexibility in displaying and presenting data language based on the knowledge generally available to one of ordinary skill in the art. *See In re Fine*, 837 F.2d at 1074; *KSR*, 550 U.S. at 417.

Thus, we will also sustain the Examiner's rejection of claims 7, 15, and 23.

CONCLUSIONS OF LAW

(1). Turpin teaches the limitation of "translating the instructions for installing the software from the portable format to an executable format at

each of the one or more remote computer systems, thereby generating executable instructions;”

(2). Turpin teaches the limitation of “receiving user input to record the instructions for installing the software;”

(3). Turpin teaches the limitation of “user input to send the software to an additional remote computer system;”

(4). Turpin and Vigue are combinable for the Examiner’s articulated reason which was not found in either reference.

DECISION

The Examiner’s decision rejection of claims 1-30 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

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AFFIRMED

ELD

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